**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 11121 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**KANTIBHAI @ MAHENDRABHAI NANABHAI NAIK - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**
MR MATAFER R PANDE for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 2,
MR ND GOHIL AGP for Respondent(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

**Date : 02/08/2006**

**ORAL JUDGMENT**

By filing the present petition, the petitioner-detenu has challenged his detention order dated 7-

302006 by which he is detained as a 'dangerous person' under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to one criminal case pending against the detenu for offences punishable under sections 323, 384, 504, 170 and 114 of the Indian Penal Code. The detaining authority has found that the activities of the detenu are such that it will prejudicially affect public order, and, therefore has detained the petitioner as a 'dangerous person'.

Learned advocate for the petitioner submitted that so far as pending criminal case is concerned, the said case is under the provisions of the Indian Penal Code and it is an individual case. He further submitted that simply because the cases are registered against the petitioner, it cannot be said that the petitioner has violated public order and some more material is required to justify the stand taken by the detaining authority that the activity of

the petitioner is prejudicial to public order. Learned advocate for the petitioner has relied upon the decision of the Division Bench of this Court in **A.J.Solanki V. Police Commissioner, Surat** reported in 2000 (1) GLH 393. In paragraph 22 of the said judgement, Division Bench of this Court has held as under :

> "So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

Learned Assistant Government Pleader is not in a position to point out any documents as to on what basis and material the detaining authority has come

to the aforesaid conclusion.

Having gone through the records, there is nothing to show that the activities of the petitioner is likely to prejudicially affect public order. There is no credible material from which it can be said that the activities of the petitioner is prejudicial to public order. The case is under the provisions of the Indian Penal Code and it is an individual case. At the most it can be said that the activities of the petitioner is in breach of law and order, and not public order. The petition is required to be allowed as from the available records it cannot be said that the activities of the petitioner is against public order.

In the result, the petition is allowed. The order of detention passed against the detenu dated 7-3-2006 is quashed and set aside. The detenu Kantibhai @ Mahendrabhai Nanabhai Naik is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

Learned advocate for the petitioner has made a

statement at the bar that the petitioner shall not enter Surat Police Commissioner area up to 30-9-2006 except for attending the trial pending against him. This statement is made voluntarily and it is for the concerned authority to monitor the same. Learned APP shall communicate the said aspect to the concerned authority.

[P. B. MAJMUDAR, J.]

*mithabhai